

CALIFORNIA COASTAL COMMISSION

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COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-05-016, Del Monte Beach Re-Subdivision Lots #2 & #6

Applicant.....Carol Frederick

Project location7 Spray Avenue & 17 Spray Avenue (Lots #6 & #2, respectively, of the Del Monte Beach Re-Subdivision, Monterey), Monterey County

Project description.....Construct a 2,334 square foot single-family dwelling on Lot #2; construct a 2,475 square foot single-family dwelling on Lot #6.

Local approval.....Architectural Review Committee Approval 2/16/05

File documents.....Coastal Act; Coastal Development Permit File 3-01-101

Staff recommendation ...Approval with Conditions

Summary: The applicant proposes to construct two single-family dwellings on two lots (lot #2 & lot #6) in the Del Monte Beach Re-Subdivision. The Commission approved the re-subdivision in 2002 pursuant to Coastal Development Permit (CDP) 3-01-101. This approval included re-subdivision and merger of 60 existing legal lots of record into 14 legal lots of record and 3 open space/habitat preserve parcels. This approval also included all infrastructure improvements necessary to serve future residential development on the 14 parcels, including road improvements, sewer, water, and utility services, as well as design and lot development standards for each parcel. The approval also included public access improvements, as well as dune restoration and maintenance for the open space/habitat preserve portions of the project. The approval for the re-subdivision in 2002, however, did not include residential development of any of the parcels because none was proposed at that time. The staff report for CDP 3-01-101 noted that future development of each parcel would require a separate City and coastal development permit, and would need to comply with the design and lot development standards approved under CDP 3-01-101. The applicant now proposes to develop two of the lots with single-family residences.

The Commission's approval of CDP 3-01-101 found that public access impacts due to future development of the 14 re-subdivided parcels were adequately mitigated by the public access amenities provided by the re-subdivision project. The proposed houses are consistent with the approved design and development standards required pursuant to CDP 3-01-101. Additionally, the amount of water allocated to the re-subdivision project is adequate for the two homes in the proposed project, as well as the remaining 12 homes that will be designed and built some time in the future. Also, the proposed



California Coastal Commission
April 2005 Meeting in Santa Barbara

Staff: S. Craig Approved by:

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project plans for both parcels include areas of flagstone and/or cobblestones set in sand, which will allow for on-site retention of runoff. Additionally, roof runoff on each parcel will be directed through gutters and downspouts into on-site percolation pits, consistent with the requirements of CDP 3-01-101 and acceptable to the Commission's water quality specialist. Furthermore, the approval of CDP 3-01-101 provided for development of new sanitary lines through the developed areas of the re-subdivision and away from the open space/habitat areas.

Regarding the protection of environmentally sensitive dune habitat, numerous conditions were placed on the re-subdivision project to reduce or mitigate the impact on dune habitat to the maximum extent feasible. Two conditions regarding construction fencing and environmental monitoring during construction, however, applied only to construction activities related to infrastructure improvements and grading of the site in preparation of development of future houses, but did not extend to the actual development of the individual houses. Therefore, the proposed project is conditioned to ensure that construction activities related to development of houses on lots #2 and #6 do not impact the adjacent open space/habitat areas. As conditioned, Staff recommends approval.

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I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number 3-05-016 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

II. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.



5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Construction Fencing. PRIOR TO COMMENCEMENT OF CONSTRUCTION,** the permittees shall submit a plan for temporary exclusionary fencing to protect adjacent sensitive dune areas, including open space areas and habitat preserve areas, from disturbance during construction. The exact placement of the temporary exclusionary fencing shall be identified on site by the project botanist. Evidence of inspection of the installed construction fence location by the project botanist shall be submitted to the Executive Director **PRIOR TO COMMENCEMENT OF CONSTRUCTION.** Vehicle parking, storage or disposal of materials, shall not be allowed within the exclusionary fences. Fences shall be installed prior to the start of construction and shall remain in place and in good condition until construction is completed. Fences shall be at least 4 feet high and secured by metal T-posts, spaced no more than 8 feet apart. Either mesh field fence, snowdrift fence, cyclone fence, or comparable barrier, shall be used.

III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location & Background

The proposed project is located on two parcels in the Del Monte Beach re-subdivision, which is located on the southern end of Monterey Bay within the City of Monterey (see Exhibit 1). The Commission approved this re-subdivision in 2002 under coastal development permit (CDP) 3-01-101. That approval included re-subdivision of portions of the existing Del Monte Beach Tract #2 Subdivision on two separate dune sites: the north site (Del Monte Shores) and the south site (Dunecrest Villas). The approval allowed for the re-subdivision of 60 parcels into 14 developable 5,000 square foot parcels, with the remaining parcels merged and preserved as open space/habitat areas (see Exhibit 2). All infrastructure improvements (e.g., water and sewer service, road improvements, drainage systems) necessary to provide the required services for the future development of each parcel were approved as part of the re-subdivision. Because the re-subdivision was located within the environmentally sensitive habitat area of the Monterey Bay dune system, the re-subdivision approval included a number of conditions to maximize sensitive habitat protection consistent with private property rights, as follows:



- Placement of a conservation deed restriction on all open space/habitat areas;
- Acknowledgement that the permit, and construction of the permitted development, would not interfere with any prescriptive or public trust rights that may exist on the property;
- Submittal of a dune restoration and enhancement plan;
- Submittal of a public access plan for the open space/habitat areas and a public access enforcement plan that describes specific measures to control and minimize potential negative impacts to the dunes from indiscriminate public access;
- Identification and utilization of a sand disposal site within the Del Monte Beach dunes system approved by the City of Monterey, the project botanist, and the Executive Director of the Coastal Commission;
- Compliance with geotechnical recommendations;
- Conformance with the requirements of the California Department of Fish & Game and the U.S. Fish & Wildlife Service, and;
- Implementation of specific measures to minimize construction impacts on rare dune plants and animals.

The approval of the re-subdivision also incorporated, by special condition, the City-approved design and lot development standards for future development on the 14 parcels (see Exhibit 3). The approval of the re-subdivision, however, did not include actual development of any of the parcels and noted that future development of each parcel would require a separate City and coastal development permit and would also need to comply with the above-stated design and development standards approved by the City and the Commission.

2. Project Description

The applicant proposes to build two single-family residences on two lots (lots #2 and #6 – see Exhibit 2, pg. 1 for location of lots) in the Del Monte Beach Re-subdivision. The proposed development on lot #2 consists of a single-story, 2,334 square foot single-family residence on a 5,000 square foot lot (see Exhibit 4 for project plans). The proposed development on lot #6 consists of a single-story, 2,475 square foot single-family residence on a 5,000 square foot lot (see Exhibit 5 for project plans). The square footage for each proposed residence includes covered parking.

The City of Monterey does not have a certified LCP. Therefore, a coastal development permit for the proposed homes must be obtained from the Coastal Commission and the proposal is subject to the policies of Chapter 3 of the Coastal Act.



B.Coastal Development Permit Determination

1. Environmentally Sensitive Habitat

The Del Monte Beach Tract #2 property lies within the Monterey Bay dune system, which is defined as environmentally sensitive habitat. Coastal Act Sections 30240(a) and 30240(b) specifically call for the protection of environmentally sensitive habitat areas and state:

***Section 30240(a):** Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

***Section 30240(b):** Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The Del Monte Beach re-subdivision site is an environmentally sensitive habitat area within the meaning of Section 30240 of the Coastal Act. This section of the Act requires that such habitat areas be protected against significant disruption or degradation. The findings in CDP 3-01-101 state that strict application of this section was not authorized in this situation, however, because to do so would cause a taking of property in violation of Section 30010 of the Coastal Act, as well as the California and United States Constitutions. Therefore, the Commission found that the applicants were permitted to re-subdivide the 60 parcels into 14 developable parcels, subject to a myriad of Special Conditions to reduce or mitigate the impact on dune habitat to the maximum extent feasible, as described in Section III(A)(1) above. Regarding the three open space/habitat areas proposed as part of the re-subdivision project, the approval of the re-subdivision included requiring placement of a conservation deed restriction on these areas, along with preservation, restoration, and long-term maintenance of these areas. Additionally, the re-subdivision approval was conditioned to require submittal of a plan for the dune restoration and enhancement component of the project, which is now underway. The Commission's approval of the re-subdivision incorporated the City's design and development standards for the future houses, including the requirement that the parcels be landscaped with native dune plants and a prohibition on nonnative and invasive plants (see Exhibit 3, pg. 4).

Additional conditions placed on the re-subdivision project included requiring the development of a construction fencing plan and biological monitoring daily during grading, and weekly during other aspects of construction. These last conditions, however, applied only to construction activities related to infrastructure improvements and grading of the site in preparation of development of future houses, but did not extend to the actual development of the individual houses. Therefore, Special Condition #1 is needed to ensure that construction activities related to development of houses on lots #2 and #6 do not impact the adjacent open space/habitat areas. As conditioned, the project will be consistent with the habitat preservation policies of the Coastal Act.



2. Public Access

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

Section 30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211: *Development shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212(a): *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

Section 30213: *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30220: *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30223: *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas and states:

Section 30240(b). *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The Del Monte Beach Re-Subdivision project approved under CDP 3-01-101 consisted of a total of 6.6 acres of dune property. Of this, the total surface area occupied by the 14 lots and the public road right-of-way/common area that will provide access to the future homes equaled 2.05 acres. The City conditioned its approval of the re-subdivision to require that the remaining 4.55 acres (69% of the total



site) would be dedicated to the City as three separate open space/habitat areas (see Exhibit 2 for location of these open space/habitat areas). The City's approval also required the owners of the private lots in the re-subdivision to establish an assessment district to guarantee an appropriate level of funding for the City to maintain the open space/habitat areas. The City's conditions were incorporated into CDP 3-01-101 as stated in Special Condition #14 of that approval.

The northernmost parcel dedicated to open space under CDP 3-01-101 occupies 2.72 acres (shown as "Parcel 'A' Public Open Space/Habitat Area" on page 1 of Exhibit 2). Elevated boardwalks on this parcel will provide public access to the beach from Spray Avenue and Beach Way. The two remaining habitat areas, totaling 1.83 acres, consist of especially sensitive habitat and will be fenced off.

The Commission's approval of CDP 3-01-101 found that public access impacts due to future development of the 14 re-subdivided parcels were adequately mitigated by the public access amenities provided by the re-subdivision project, as discussed above. Thus, any public access impacts due to the proposed development of these two parcels were mitigated under CDP 3-01-101; therefore, the proposed project is consistent with the public access requirements of the Coastal Act.

3. Visual Resources

Coastal Act Section 30251 requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas, and states:

***30251.** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Coastal Act Policy 30251 is intended to protect public views and does not provide for private view preservation. In CDP 3-01-101, the Commission found that the re-subdivision of 60 existing lots to 14 clustered lots represented a major decrease in density with an associated decrease in future impacts on public views. Additionally, the Commission found that the approved residential parcels in the re-subdivision would be located more than 200 feet from the beach and that future development of the 11 oceanside parcels (3 of the parcels created by the re-subdivision are not visible from the beach) would appear to be contiguous with the existing adjacent neighborhood. Furthermore, none of the re-subdivided residential parcels are visible from the Highway One scenic corridor.

The City conditioned its approval of the re-subdivision to require design and development standards for the re-subdivided parcels. These standards (see Exhibit 3) were incorporated into CDP 3-01-101 by special condition. Specific standards include limiting future residential development on the re-



subdivided parcels to a single story with a maximum floor-to-roof height of 16 feet and a maximum building coverage of 2,700 square feet, limiting building site coverage (building coverage plus surface coverage) to 64% of the square footage of the parcel, and defining horizontal and vertical building envelopes. These standards also require that future residences on the parcels have a modulated appearance to avoid plain, boxy designs, and require that finish materials and colors are compatible with the materials and colors found in the surrounding environment of adjacent existing homes.

The design for the 2,334 square foot house proposed on lot #2 is well articulated and includes exterior materials such as copper-clad windows, a wooden front door and garage door, a clay barrel tile roof, and copper gutters and downspouts (Exhibit #4). The maximum height of the house is 14 feet and the site coverage is 61%. The design for the 2,475 square foot house proposed for lot #6 is also well articulated and includes a unique octagonal living space (Exhibit #5). Exterior materials include aluminum-clad windows with wood trim and wood sills, cut slate roofing materials, copper gutters and downspouts, and a stained wood garage door. The maximum height of the house is 16 feet and the site coverage is 59%. As approved by the City, the proposed houses are consistent with the approved design and development standards required pursuant to CDP 3-01-101. Therefore, the proposed houses are consistent with Coastal Act Section 30251 regarding protection of scenic resources.

4. Public Services

Coastal Act Section 30250 states, in part:

New residential. . . development shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. . .

Coastal Act Section 30254 states, in part:

...Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.



Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Water. The Monterey Peninsula Water Management District (MPWMD) allocates water to all of the municipalities on the Monterey Peninsula. The actual water purveyor is the California American Water Company (Cal Am). Each municipality allocates its share of water to various categories of development, such as residential, commercial, industrial, etc.

Before approval of the re-subdivision, City staff met with staff of the Monterey Peninsula Water Management District (MPWMD) regarding water requirements for the re-subdivision. MPWMD staff indicated that, when developed, the approved 14 total units would require 2.42 acre-feet of water per year. This figure includes the landscaping requirement. The City had previously allocated 2.57 acre-feet/year of water for development of the re-subdivision, which slightly exceeds the 2.42 acre-feet/year required upon full build-out of the re-subdivision.

The amount of water allocated to the re-subdivision project is adequate for the two homes in the proposed project, as well as the remaining 12 homes that will be designed and built some time in the future. In addition, the City conditioned its approval of the re-subdivision to require the installation of ultra low-flow fixtures and landscaping with native drought-tolerant dune plants. These conditions were incorporated into the Commission's approval of the re-subdivision project. Furthermore, the landscape plan for both proposed homes includes native dune plant species (as shown on page 5 of Exhibits 4 & 5). Given all the above, the proposed project is consistent with Coastal Act Section 30250 regarding water supply.

Drainage and Water Quality. The proposed project plans for both parcels include areas of flagstone and/or cobblestones set in sand, which will allow for on-site retention of runoff. Additionally, roof runoff on each parcel will be directed through gutters and downspouts into on-site percolation pits, consistent with the requirements of CDP 3-01-101 and acceptable to the Commission's water quality specialist. Thus, the proposed project is consistent with Coastal Act Sections 30230 and 30231 regarding maintenance of water quality.

Sewer System. The approval of CDP 3-01-101 provided for development of new sanitary lines through the developed areas of the re-subdivision and away from the open space/habitat areas. These new lines will connect the re-subdivided parcels with the existing sanitary sewer system. The existing wastewater treatment facilities are adequate to handle and properly treat the additional wastewater flow that will be generated by the development of these two homes. Thus, the proposed project is consistent with Coastal



Act Section 30250 regarding adequate sewer capacity.

5. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

